

Hank Rugeley
hankrugeley@sbcglobal.net
DAVISON RUGELEY, L.L.P.
900 Eighth Street, Suite 1102
P. O. Drawer 99
Wichita Falls, Texas 76307
(940) 766-1388
(940) 766-5396 – FAX

ATTORNEYS FOR FIRST BANK

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION

IN RE:	§	
	§	
PAULA JANE BARKER,	§	CASE NO. 10-70477-hdh-13
	§	CHAPTER 13
DEBTORS.	§	

OBJECTION TO POST-CONFIRMATION MODIFICATION

First Bank (the “Bank”) files this its objection to the Modification of Plan After Confirmation (Docket No. 26) filed by the Debtor on or about February 17, 2011 and would show the Court the following

1. The Bank is both a secured creditor and unsecured creditor of the Debtor. The Bank has two secured claims. The Bank has a secured claim on the real property located at 3217 Hollywood Avenue, Wichita Falls, Texas which is being paid direct. The payoff amount for this secured claim as of March 9, 2011 is \$2,496.59. The second secured claim is on a 2007 Ford motor vehicle which was set in the confirmed plan at \$4,000.00. The Bank has a deficiency claim on the 2007 Ford in the amount of \$2,028.43.

2. This bankruptcy was filed on October 14, 2010. The original plan filed by the Debtor provided for monthly payments of \$247.00.

3. According to the Report of 341 Meeting (Docket No. 14), the Trustee provided under “Section L. Objection to Confirmation” as follows:

PLAN FAILS TO PROVIDE STEP PAYMENTS WHEN 401K LOAN &
SPOUSES CAR IS PAID IN FULL
UNABLE TO VERIFY SPOUSE’S INCOME-VERY CLOSE TO MEDIAN
INCOME
100% PLAN WILL RESOLVE ALL OBJECTIONS AND NEED FOR
PAYSTUBS

4. On December 16, 2010, the Court entered its confirmation order which included the following:

THE DEBTOR’S MONTHLY PLAN PAYMENT TO THE TRUSTEE
SHALL INCREASE TO \$547.00 BEGINNING JANUARY 2011. THE
PLAN TERM SHALL BE EXTENDED FROM 36 TO 45 MONTHS. THE
NEW PLAN BASE SHALL BE \$24,015.00. THE PLAN SHALL PAY
100% TO THE ALLOWED UNSECURED CLAIMS FILED.

5. Modification of the plan should be denied pursuant to Sections 1329, 1322(a)(1), and 1325(a)(3) of the Bankruptcy Code because the Debtor’s proposed modified plan will not pay the creditor’s to the extent of the Debtor’s capability. The Court should take into consideration the Debtor’s ability to contribute more to the plan based upon completion of the payment of their home loan, based upon completion of payment of the spouse’s car payment, and based upon completion of the payment of the 401(k) loan. In addition, upon information and belief, the information included in the Debtor’s schedules is not correct. The Debtor’s should be required to pay 100% of unsecured claims and should be required to pay up to 60 months if necessary.

WHEREFORE, PREMISES CONSIDERED, the Bank prays that the modification requested by the Debtor be denied and that the Bank have such other and further relief to which it may be justly entitled.

Date: March 9, 2011

Respectfully submitted,

DAVISON RUGELEY, L.L.P.
900 Eighth Street, Suite 1102
P. O. Drawer 99
Wichita Falls, Texas 76307
(940) 766-1388
(940) 766-5396 – FAX

By: /s/ Hank Rugeley
Hank Rugeley
State Bar No. 17382900

ATTORNEYS FOR FIRST BANK

CERTIFICATE OF SERVICE

I hereby certify that on March 9, 2011, a true and correct copy of the foregoing was served on all parties of record via ECF or first class mail as follows:

Monte J. White
Monte J. White & Associates, P.C.
1106 Brook Avenue
Wichita Falls, Texas 76301

U. S. Trustee
1100 Commerce Street, Room 976
Dallas, Texas 75242-1496

Mr. Walter O'Cheskey
Chapter 13 Trustee
6308 Iola Avenue
Lubbock, Texas 79424

/s/ Hank Rugeley
Hank Rugeley

P:\HLR\First Bank\06012.009 Barker\Pleadings\obj - post-conf modification.wpd